

ORIGINAL
FILE

du Treil, Lundin & Rackley, Inc.

A Subsidiary of A. D. Ring, P. C.

RECEIVED

APR 23 1991

April 23, 1991

Federal Communications Commission
Office of the Secretary

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Searcy:

Enclosed are the original and four copies of a
Reply to Opposition prepared with respect to RM-7651.

Very truly yours,



Louis R. du Treil

Enclosures

LRD:las

DLR:2248



1019 19th Street, N.W.
Third Floor
Washington, D.C. 20036
202/223-6700
FAX: 202/466-2042

L. Robert du Treil
John A. Lundin
Ronald D. Rackley
L. Robert du Treil, Jr.
W. Jeffrey Reynolds

Steven J. Crowley
Ann Gallagher
Donald F. Ledford

James D. Sadler
Jerome E. Sadler
J.W. Stielper

Consultants To The Firm:
Marvin Blumberg
Howard T. Head
Harold L. Kassens
Ogden L. Prestholdt

RECEIVED

APR 23 1991

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of 73.213(a)) RM-7651
Grandfathered Short-Spaced Stations)

Reply to Opposition

Hatfield and Dawson; du Treil, Lundin & Rackley, Inc.; and Cohen, Dippell and Everist, P.C.; filed a "Joint Petition for Rule Making" with the Commission, which was assigned RM-7651. Opposition to the petition was filed by the National Association of Broadcasters ("NAB") and King Broadcasting Company ("King"). This statement replies to material contained in those petitions.

Both King and NAB miss the point of the petition. The thrust of the petition is to seek relief for a limited number of grandfathered, short-spaced stations, particularly those achieving that status prior to November 16, 1964. The statements by King and NAB regarding the increased number of FM stations¹ now in existence as compared with 1964 has no relevance to the rule change request. The requested rule change seeks no major revision of allocation principles, only a return to the previous

¹Statement of Robert L. Hammett, Page 1; NAB Petition, Page 4.

administrative scheme for a few stations trapped in rules that "don't fit."

Major change in interference level will not result from the proposed changes. History has shown the second or third-adjacent channel short-spaced situation are not particularly troublesome. Although no technical information proving the contention that interference for second or third adjacent channel short-spaced stations is inconsequential was provided, neither have King nor NAB presented evidence to the contrary. Such evidence, if it exists, is moot; since these changes in interference levels which may result from the proposed changes in the rules are very small.

The NAB comments blindly state that no good can come from the proposed changes.² Consider for example a third-adjacent channel short-spaced station with transmitter located in a heavily populated area, such as a downtown building. It is quite common, for many reasons, for such a station to consider moving to a different location for improved antenna height, less radiation potential, etc. Such a move might result in further short-spacing to the companion short-spaced station; however, resulting interference to the companion station, if any, would

²NAB, Page 4.

fall in a less densely populated area reducing the potential for actual interference. Such a move closer will result in an improved desired-to-undesired signal ratio for the comparison station. The NAB failed to grasp the nature of the problem which, as shown, can indeed result in a lessening of interference potential.

In addition, Par Broadcasting, in its comments, demonstrates how in the specific case of its proposed site change, interference would be reduced. There is no question that the opportunity exists to improve the interference situation by "relaxed" rules. Doubtless other examples exist and would be filed with the FCC if the rule making is instituted.

The NAB suggests that the consent of the companion short-spaced station be a prerequisite to further short-spacing. This precondition to a possible grant does not serve the public interest because by the nature of second or third adjacent channel short-spacing, the stations are necessarily physically close. Even if the change would result in a lessening of interference potential, consent may not be given if normal competitive attitudes exist between the stations. It is the FCC's decision to decide whether a change should be made in the

public interest, rather than allowing private interest considerations to control.

King suggests that each short-spacing problem should be reviewed on a case-by-case basis by the Commission. If the current rule is sufficiently unclear or inapplicable, which we believe, a difficult situation is presented for the FCC staff, as they have no clear direction. With rule changes as suggested by this joint petitioner, the processing of such short-spaced, grandfathered stations can proceed unimpeded by ambiguous rules. Processing of applications on a case-by-case basis is simply not an efficient use of administrative resources considering the FCC staff workload.

The NAB alludes to additional interference by allowing short-spaced cochannel or first-adjacent channel stations use of the interfering contour rather than the 1 mV/m contour. It is anticipated that short-spaced full facility stations have mutual interference. If one station wishes to move, the important consideration is not to increase the level of interference. There is no rational reason for assuming the 1 mV/m "protected contour" is the standard to be employed. This was obviously adopted as an administrative tool. If the FM rules are to reflect reality and good engineering practice, it is logical that

the interfering contour is the standard to use. The petitioners request, therefore, to permit a short-spaced cochannel or first-adjacent channel station to move close while maintaining interference levels. The change simply maintains status quo.

It is true, as stated by the Commission when the rules under discussion was modified, that stations had 22 years to take advantage of it. In many instances, there was no need or incentive to move. Recent changes, such as increased population density near the transmitter site, formerly unavailable sites now available, increased concern for radiofrequency radiation density for both the public and occupational workers, changes in zoning requirements and availability of taller support structures have made changes desirable. Grandfathered short-spaced stations should have the option of further short-spacing so as to improve coverage, a factor clearly in the public interest.

In short, King and NAB miss the point. No wholesale revision of allocation rules and interference considerations is requested. Relief is requested for those few short-spaced grandfathered stations whose existence is governed by ambiguous rules. No increase in interference or the "fear of interference" is created by returning to rules which were easy to administer and resulted in improved overall broadcasting service.

For all these reasons, the FCC should formally designate this matter for rule making so a full and complete record can be developed.

Respectfully submitted,

Benjamin F. Dawson, III
las

Benjamin F. Dawson, III

Hatfield & Dawson
4226 Sixth Avenue, N.W.
Seattle, Washington 98107
(206) 783-9151

Louis R. du Treil

Louis R. du Treil

du Treil, Lundin & Rackley, Inc.
1019 19th Street, N.W., 3rd Floor
Washington, D.C. 20036
(202) 223-6700

Donald G. Everist
las

Donald G. Everist

Cohen, Dippell and Everist, P.C.
1300 L Street, N.W., Suite 1100
Washington, D.C. 20005
(202) 898-0111

April 23, 1991

Certificate of Service

I, Linda A. Sadler, hereby certify that a true and correct copy of the foregoing "Reply to Opposition" was sent by first class mail, on this 23rd day of April, 1991, to the following:

Frank R. Jazzo, Esquire
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
Counsel for King Broadcasting Company

Christopher Smallwood, Esquire
1718 Corcoran Street, N.W.
Suite 44
Washington, D.C. 20009
Counsel for Par Broadcasting Company

Mr. Michael Rau
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Mr. John J. Mullaney
Mullaney Engineering, Inc.
9049 Shady Grove Court
Gaithersburg, Maryland 20877



Linda A. Sadler